out the dispositions he desires to make of it, should be allowed to close his eyes in death with the assurance at least that a reasonable effort will be sanctioned by the law to sustain his will, at the expense of his own estate. If the share that would otherwise have gone to his next of kin shall be lessened thereby, it is presumably caused by the testator himself, who had the right, *prima facie*, to appropriate his property as he might see fit; and the formal execution of his will should ordinarily authorize his executor to use a reasonable part of his estate to establish and carry out that will."

Among the authorities cited by the court is the Virginia case of *Roy* v. *Roy*, 16 Gratt. 418, where "costs" were allowed to an executor, in an unsuccessful suit to sustain the will. Other cases cited are: *Meeker* v. *Meeker*, 74 Iowa, 352; *Phillips' Will*, 81 Ky. 328; *Day* v. *Day*, 3 N. Y. Eq. 549; *Lassiter* v. *Travis*, 98 Tenn. 330; *Comstock* v. *Hadlyme Ec. Soc.*, 8 Conn. 254.

BANKRUPTCY.—The ruling in *Pirie* v. *Trust Company*, 182 U. S. 438, 21 Sup. Ct. 906, commented upon *ante*, p. 438, continues to receive the attention of the subordinate courts of bankruptcy. This has been shown in our November and December numbers, but in *Re Dickson*, 111 Fed. 726, the Circuit Court of Appeals for the First circuit boldly takes the position that as to one phase of the facts presented there, the Supreme Court cannot have meant what it said in the *Pirie* case, and states in terms that there is even a limit to the extent to which a lower court is bound to follow a construction of a statute by the Supreme Court. It rules in substance that a creditor who has within four months received payments in good faith will not be held to have received a preference where the result of sundry transactions is an increase of the net indebtedness to him and a corresponding decrease of the bankrupt's assets.

The opinion of Putnam, Circuit Judge, is so frank in its statement of the intention of his court to do a somewhat unusual thing, that we append that portion of it in full:

"There is one view of the pending cases, however, which is not touched on by the Supreme Court, and which apparently was not brought to the attention of the District Court. Moreover, it has not been brought to our attention by the parties. Yet, if we affirm the decree below, the result would do such gross injustice, and would also establish so unfortunate a precedent, that we cannot overlook the matter.

"The account current between the creditors and the bankrupt shows that, month by month, payment was made for the precise amount of merchandise sold the previous month, as we have already said. The petition in bankruptcy was filed on December 13, 1899. Going back four months, the last transaction prior thereto was on August 10th, which was a sale of merchandise amounting to $128.20. There had also been a sale on August 7, 1899, amounting to $676.01. The total of these two sales was $804.21. On the 13th day of August, just four months before the petition was filed, the bankrupt owed the creditors only this amount of $804.21. The prices of all merchandise sold before that day had been paid, the last payment having been made on August 8th. The account shows the subsequent transactions by virtue of which, although payments were made as already stated, the indebtedness was increased during the four months ending December 13th from $804.21 to the amount proved, $2,174.20—a net increase of indebtedness during that period of $1,369.99.

"While the Supreme Court has adopted a literal construction of the statute in question, and we are bound to follow it, there must nevertheless be a limit to that method of interpretation, and these cases reach it. It is beyond all reason to hold, because a creditor has, in the ordinary course of business, during the four months

preceding bankruptcy, received payments which under some circumstances might operate as a preference in some views of the law, that that fact can be held to bar the proof of his claim, when, looking at all the transactions together, they demonstrate not only that they were without any intention to acquire any unjust preference, but also that they have increased the net indebtedness to the creditor, and correspondingly increased the bankrupt's estate. In order to avoid so unreasonable a result, we might say that all the transactions covered by the account current should be regarded as one, so that it could not be held that the effect of the payments was to enable the creditors at bar to obtain a greater percentage of their debt than any other creditor of the same class, within the meaning of paragraph 'a' of section 60. A result was reached under similar circumstances by the Circuit Court of Appeals for the Seventh circuit in *McKey* v. *Lee*, 45 C. C. A. 127, 105 Fed. 923, already referred to, by giving a construction to paragraph 'c' of section 60 beyond what its letter calls for; but we prefer to put the result on the broad ground that in the absence of positive and direct expressions, evidently intended to accomplish a particular purpose, the ordinary rules of construction require us to avoid interpreting this statute so as to effectuate so unreasonable a purpose. In this view, the decree of the court below should be reversed."

CONTEMPT—LIBELOUS PUBLICATION AFTER DECISION RENDERED.—The case of *Ex parte Lawrence and Canfield*, 34 Chicago Legal News, 132, decided Dec. 7, 1901, by the Circuit Court of Cook county, Illinois, presents certain remarkable facts and, we are inclined to think, certain equally remarkable law. It was an application for a writ of *habeas corpus* by the proprietor and editor of a Chicago newspaper to obtain their release from a sentence of thirty and forty days respectively in the county jail, imposed by a co-ordinate court for contempt of court.

The facts were briefly that relators had published a libelous article concerning and a cartoon of the Hon. Elbridge Hanecy, judge of the Circuit Court of Cook county, based upon a decision which he had rendered in a case of great popular interest. Judge Hanecy directed that an information be filed against the proprietor and editor for the alleged contempt, and in their answer thereto they acknowledged their responsibility for the publication and authorship of the offensive matter, but denied that they had intended "to influence, prejudice or terrorize the court with reference to its decision," for the specific reason that the case in question was decided on the day before the publication of the article. As a matter of fact, while Judge Hanecy had read a written opinion disposing of the legal questions involved in the case, and had in open court stated that "the order of August 9, 1901, is set aside and the petition and the information are dismissed," no formal order was entered on that day or before the publication of the article. The respondents in that court urged, however, that this was a final decision of the entire question—a complete determination of the entire controversy *quoad* that court—and they argued that they were therefore at liberty to comment on the decision in the manner charged.

Judge Dunne, also of the Circuit Court of Cook county, who issued the writ of *habeas corpus* to ascertain the legality of the convictions for contempt, affirms in a long opinion, first, his power to inquire into the jurisdiction of a co-ordinate court to enter a final order of commitment in a contempt case. He then rules (citing Black on Judgments, Vol. 1, sec. 106, and Freeman on Judgments, 2d ed. sec. 38), that the language used by Judge Hanecy in open court in dismissing the first cause, was equivalent to—indeed, *was* the final order in the proceeding,